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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/686,778	10/10/2000	Tom Van Horn	MCTA-003/02US	5167
758	7590	11/26/2004	EXAMINER	
FENWICK & WEST LLP SILICON VALLEY CENTER 801 CALIFORNIA STREET MOUNTAIN VIEW, CA 94041			GART, MATTHEW S	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 11/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/686,778

Applicant(s)

VAN HORN ET AL.

Examiner

Matthew s Gart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) 11-14 and 28-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 15-27 and 32-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 October 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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### **DETAILED ACTION**

Claims 1-38 are pending in the instant application.

Claims 11-14 and 28-31 were withdrawn from further consideration pursuant to 37 CFR 1.142(b).

Claims 1-10, 15-27 and 32-38 are rejected as set forth below.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1-10, 15-27 and 32-38 are rejected under 35 U.S.C. 102(e) as being anticipated by Van Horn U.S. Patent No. 6,631,356.**

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Referring to claim 1. Van Horn discloses a system for aggregating demand in group-buying sales conducted across an electronic network (Van Horn: abstract), comprising:

- A computerized facility configured to conduct group-buying sales operably coupled to the electronic network (Van Horn: column 1, lines 5-55), the computerized facility including specification software executable on the computerized facility and configured to:
  - Receive item data from a seller that defines a feature item for a first group-buying sale (Van Horn: column 15, lines 36-47);
  - Receive sale date from the seller that provides the seller's directions for the first group-buying sale (Van Horn: claim 1); and
  - Store the received item data and the received sale data in a data repository (Van Horn: claim 1 and Figure 5).

Referring to claim 2. Van Horn further discloses a system wherein the sale data provides direction for at least a second group-buying sale for the featured item, the computerized facility further comprising seller communication software executable on the computerized facility configured to send the seller status data about the first group-buying sale (Van Horn: column 11, lines 5-25).

Referring to claim 3. Van Horn further discloses a system wherein the specification software is further configured to:

- Receive seller data from the seller that identifies the seller and provides contact information for the seller (Van Horn: columns 13-16, Database Tables); and

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- Store the received seller data in the data repository (Van Horn: columns 13-16, Database Tables).

Referring to claim 4. Van Horn further discloses a system wherein the received item data includes a featured item abstract and wherein the computerized facility further comprises seller/partner filter software executable on the computerized facility and configured to:

- Receive partner abstract terms and partner display criteria from a partner site (Van Horn: column 15, line 15 to column 16, line 13);
- Retrieve the featured item abstract from the data repository and compare the featured item abstract with the partner abstract terms according to the partner display criteria (Van Horn: column 15, line 15 to column 16, line 13); and
- Send data about the featured item to the partner site if the seller/partner filter software identifies a match between the featured item abstract and the partner abstract terms according to the partner display criteria (Van Horn: column 15, line 15 to column 16, line 13).

Referring to claim 5. Van Horn further discloses a system wherein the specification software is further configured to receive as item data from the seller a featured item name, a featured item description, and an image of the featured item (Van Horn: column 15, line 15 to column 16, line 13 and Figure 15).

Referring to claim 6. Van Horn further discloses a system wherein the specification software is further configured to:

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- Receive as item data from the seller a product/service category for the featured item (Van Horn: claim 27); and
- Store received the product/service category for the featured in the data repository (Van Horn: claim 27).

Referring to claim 7. Van Horn further discloses a system wherein the computerized facility arranges received featured items and product/service categories in a format organized according to a tree data structure (van Horn: claim 27).

Referring to claim 8. Van Horn further discloses a system wherein the sale data received from the seller by the specification software contains as elements a start date and an end date for the first group-buying sale of the featured item, an initial price for the featured item in the first group-buying sale, and quantity of the featured item available for sale (Van Horn: columns 13-16, Database Tables).

Referring to claim 9. Van Horn further discloses a system wherein the specification software is further configured to:

- Receive seller data from the seller that identifies the seller and provides contact information for the seller (Van Horn: columns 13-16, Database Tables); and
- Store the received seller data in the data repository (Van Horn: columns 13-16, Database Tables).

Referring to claim 10. Van Horn further discloses a system wherein the specification software is further configured to:

- Receive seller data from the seller that identifies the seller and provides contact information for the seller (Van Horn: columns 13-16, Database Tables);

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- Create a seller account for the seller on the computerized facility; and store data describing the seller account in the data repository (Van Horn: columns 13-16, Database Tables).

Referring to claims 15-27. Claims 15-27 are rejected under the same rationale as set forth above in claims 1-10.

Referring to claims 32-38. Claims 32-38 are rejected under the same rationale as set forth above in claims 1-10.

### ***Response to Arguments***

Applicant's arguments filed 8/16/2004 have been fully considered but they are not persuasive.

The Applicant argues that nowhere does Van Horn expressly disclose a component "configured to receive a seller's description of a featured item," as specifically claimed in claim 15.

The Examiner notes, Van Horn does disclose a method and apparatus where a buyer expresses interest in a certain type of featured product through browsing such product or joining a co-op or otherwise (column 13, lines 26-29). Furthermore the product list and product details modules of Van Horn show the co-op product description (of the featured product), price, product features, etc (column 15, lines 36-48).

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The Applicant argues that nowhere does Van Horn expressly disclose a component "configured to receive the seller's instructions," as specifically claimed in claim 15.

The Examiner notes, Van Horn discloses a method of globally creating buying groups on a purchase-by-purchase basis, which brings a vast number of potential buyers to the bargaining table. Consequently, it provides a superior method of quickly moving large quantities of specific products. This will be useful to product suppliers (sellers) in many ways. For example, a supplier (seller) might utilize the invention's sales platform to sell a substantial volume of one product for the specific purpose of increasing its market share. It even would be possible under this example for the supplier (seller) to specify a minimum sales volume (seller's instruction) so that no sales are made unless its market share objectives are met (column 5, lines 19-39).

The Examiner further notes, the instant invention defines a seller as a manufacturer, retailer, service provider, or other party (e.g., another customer) offering product/services for sale to customers, business, or other buyers via the on-line group-buying sale sales method. The supplier of Van Horn falls within the definition of a seller in the instant invention.



***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

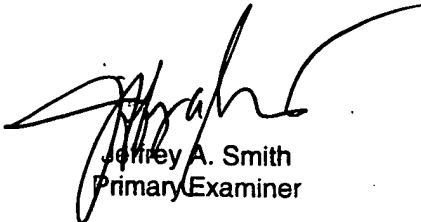
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew s Gart whose telephone number is 703-305-5355. The examiner can normally be reached on 8:30AM to 5:00PM m-f.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 703-308-1344. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MSG  
Patent Examiner  
November 16, 2004



Jeffrey A. Smith  
Primary Examiner